

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Owen D. James III)
Dist. 4, Map 47, Control Map 47, Parcel 67.00,) Loudon County
S.I. 000)
FARM Property)
Tax Year 2006)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$72,500	\$ -0-	\$72,500	\$18,125

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a prehearing conference and hearing in this matter on September 17, 2007 in Loudon, Tennessee. In attendance at the hearing were Owen D. James, III, Owen D. James, Jr., Chuck Jenkins, Loudon County Assessor of Property, and staff appraiser Jane Young.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 64.98 acre tract located on Jim Dyke Road in Loudon, Tennessee.

Subject property was previously owned by Annie J. Bates and received preferential assessment under the Agricultural, Forest and Open Space Land Act of 1976 [“the greenbelt law”] which is codified at Tenn. Code Ann. § 67-5-1001, et seq. On May 25, 2005 a warranty deed was executed transferring ownership to the appellant, Owen D. James, III. As will be detailed below, the assessor subsequently disqualified subject property from the greenbelt program and assessed rollback taxes [see Tenn. Code Ann. § 67-5-1008] due to Mr. James’ failure to file a new greenbelt application. The taxpayer filed an appeal with the State Board of Equalization on February 27, 2007 contending that subject property should continue to receive preferential assessment under the greenbelt law.

The administrative judge finds that situations such as this are governed by Tenn. Code Ann. § 67-5-1005(a)(1) which provides as follows:

Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. New owners of the land who desire to continue the previous classification must apply with the assessor by March 1 in the year following transfer of ownership. New owners may

establish eligibility after March 1 only by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor. . . .

The administrative judge finds that the assessor of property sent Mr. James a letter on August 9, 2005 advising him of the need to file a new greenbelt application. The administrative judge finds Mr. James testified that the letter was overlooked until 2007 due to a serious family illness at the time the letter was sent.

On April 21, 2006 the assessor issued an assessment change notice effectively advising Mr. James subject property was no longer receiving preferential assessment under the greenbelt law. The Loudon County Trustee subsequently issued a tax bill on or about October 1, 2006. The tax bill indicated both the amount of rollback taxes due as well as the taxes due on the revised appraisal.

Pursuant to Tenn. Code Ann. § 67-5-508(a)(2), the assessor published a notice in the local newspaper advising the citizenry that the Loudon County Board of Equalization would be in session from June 1, 2006 – June 5, 2006 and that failure to appeal could result in the assessment becoming final without further right of appeal. The taxpayer did not appeal to the local board.

The administrative judge finds that the Assessment Appeals Commission construed Tenn. Code Ann. § 67-5-1005(a)(1) in *W. Gene Downs* (Franklin Co., Tax Year 2001) to mean that a taxpayer in Mr. James' position has the right to a "reasonable cause" hearing pursuant to Tenn. Code Ann. § 67-5-1412(e). For ease of reference, that decision is appended to this order.

The administrative judge finds that the Assessment Appeals Commission, in interpreting Tenn. Code Ann. § 67-5-1412(e), has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., (Williamson County, Tax Year 1992). *See also John Orovets*, (Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Loudon County Board of Equalization.

Respectfully, the administrative judge finds nothing in the record to support the conclusion that Mr. James was prevented from appealing to the Loudon County Board of Equalization due to a circumstance beyond his control. The administrative judge finds the serious family illness referenced above occurred around the time of the assessor's initial letter of August 9, 2005. The administrative judge finds Mr. James might well have

overlooked that letter due to the family illness. However, the administrative judge finds that the relevant inquiry concerns why no action was taken following issuance of the assessment change notice on April 21, 2006 or notice of the local board's session the following month. Absent such evidence, the administrative judge finds this appeal must be dismissed.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$72,500	\$ -0-	\$72,500	\$18,125

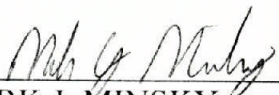
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of September, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Owen D. James III
Chuck Jenkins, Appeals Manager

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	W. GENE DOWNS)	
	Map 113, Parcel 16.00)	Franklin
	Farm Property)	County
	Tax Year 2001)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the appeal must be dismissed for failure to state a basis for relief from a greenbelt rollback assessment. The appeal was heard on November 4, 2003 before Commission members Isenberg (presiding), Brooks, Ishie, Millsaps, Rochford, and Simpson, sitting with an administrative judge.¹ Mr. Downs represented himself, as did the assessor.

Findings of fact and conclusions of law

The subject property is a 34 acre tract previously owned by Mr. Downs' mother and previously approved for the agricultural classification under the Agricultural, Forest and Open Space Land Act of 1976 ("greenbelt"). The greenbelt law allows qualifying property to be assessed at its use value (as a farm tract, for example) rather than at its market value in some more intensive "highest and best" use. When greenbelt property is disqualified, the owner must pay back the taxes saved for the three most recent years, or "rollback" taxes.

Although Mr. Downs' mother conveyed the property to her son in 1989, the property remained under lease to a local farmer and Mrs. Downs continued to receive the rent. When Mr. Downs finally recorded the deed in November of 2000, the assessor recorded the ownership change and sent Mr. Downs a letter informing him of the need to apply for greenbelt in his own name. The letter was addressed to Mr. Downs care of his mother, at Route One, Rogersville, Alabama, the address listed on the recorded deed. Mr. Downs, who lives in Culleoka, testified he did not actually become aware of the need to apply in his own name until after the tax bill was sent in October of 2001.

The administrative judge denied relief on the basis that the statute required Mr. Downs as new owner to apply in his own name by March 1, 2001, that he did not do so, and that he cited no basis for relief. In fact the statute requires a new owner to apply in the new owner's name by March 1 of the year following *the transfer*, but allows the new

¹ An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

owner to establish eligibility notwithstanding the deadline "by appeal pursuant to Parts 14 and 15 of [Title 67, Chapter 5] duly filed after notice of the assessment change is sent by the assessor." Tenn. Code Ann. §67-5-1005. Mr. Downs indeed did appeal, but he was late doing so and failed to first appeal to the Franklin County Board of Equalization. Although the administrative judge did not do so, we feel constrained to consider whether reasonable cause existed for the taxpayer's failure to file timely and to first appeal to the county board of equalization.²

Regrettably, it does not appear that reasonable cause has been shown. The assessor testified he sent the notice of assessment change (triggering the right to appeal) to Mr. Downs at the address provided in the recorded deed. Although Mr. Downs' mother may have been confused by the notice and failed to bring it to her son's attention in time to allow him to pursue his right of appeal, the assessor did all he could and the failure of notice under the circumstances must be attributed to the taxpayer.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed for the reasons stated. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

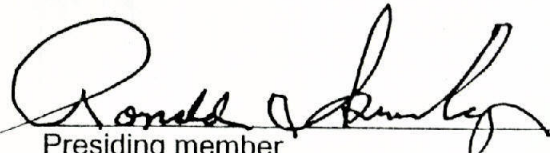
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 22, 2004


Presiding member

ATTEST:

² Tenn. Code Ann. §67-5-1412 (e) provides in part: "The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made."

Kelsie Jensen
Executive Secretary

cc: Mr. W. Gene Downs
Mr. Philip Hayes, Assessor